

USDC SDNY**DOCUMENT****ELECTRONICALLY FILED****DOC #:** _____**DATE FILED:** 03/21/2017

KELLOGG, HANSEN, TODD, FIGEL & FRUIT
 SUMNER SQUARE
 1615 M STREET, N.W.
 SUITE 400
 WASHINGTON, D.C. 20036-3215

(202) 326-7900

FACSIMILE:

(202) 326-7999

March 21, 2017

Via ECF

The Honorable Sarah Netburn
 Thurgood Marshall United States Courthouse
 40 Foley Square, Room 430
 New York, NY 10007

Re: *In re Terrorist Attacks on September 11, 2001, 03 MDL 1570 (GBD)(SN)*

Dear Judge Netburn:

The Kingdom of Saudi Arabia (“Saudi Arabia”) writes pursuant to this Court’s order setting a status conference on March 23, 2017. Order, Dkt. No. 3467 (Mar. 17, 2017). Saudi Arabia respectfully suggests that one additional item be added to the agenda: the status of a new complaint filed by the *Ashton* plaintiffs on March 20 in the Southern District of New York. *See* Complaint, *Kathleen Ashton, et al. v. Kingdom of Saudi Arabia*, 17 CV 2003, Dkt. No. 1 (Mar. 20, 2017). This new complaint filed by a member of the Plaintiffs’ Executive Committees is substantially different from the Consolidated Amended Complaint served by the Plaintiffs’ Executive Committees, pursuant to this Court’s order, on March 1. The new *Ashton* complaint was not sent to counsel for Saudi Arabia until the day it was filed.

As the Court knows, the Plaintiffs’ Executive Committees and Saudi Arabia agreed upon a schedule, approved by this Court, for the Plaintiffs’ Executive Committees to consolidate the various pleadings against Saudi Arabia and to serve the Consolidated Amended Complaint on Saudi Arabia on March 1.¹ Saudi Arabia agreed to file a consolidated motion to dismiss on June 1, but also reserved its right to object to the amendment after reviewing the new complaint. Plaintiffs’ Executive Committees sent a number of letters to the Court memorializing these agreements. *See, e.g.*, Dkt. 3412, Dkt. 3431, Dkt. 3449. All of those letters included in the letterhead the name of the *Ashton* plaintiffs’ counsel of record, Mr. Kreindler, in his capacity as co-chair of one of the Committees.

¹ The Saudi High Commission (“SHC”) was also a party to this agreement, but is not named in the new *Ashton* complaint.

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

The Honorable Sarah Netburn

March 21, 2017

Page 2

None of plaintiffs' letters mentioned the possibility that the *Ashton* plaintiffs would file a separate complaint, much less a substantially different one.² Nor was there any suggestion that the *Ashton* plaintiffs would not be bound by the March 1 deadline. This Court agreed to the proposed deadlines in an order filed on February 16. *See* Dkt. 3449 at 2. On March 16, Saudi Arabia informed the Court that it would not oppose the filing of the Consolidated Amended Complaint, but would instead move to dismiss, as agreed, on June 1. *See* Dkt. 3461 at 1. Saudi Arabia also informed the Court that it would not oppose amendment of complaints in *Burnett*, *Continental Casualty*, and *Euro Brokers*, on the understanding that the amended complaints would "track almost identically" or "closely track[]" the Consolidated Amended Complaint. *Id.* at 1-2. Saudi Arabia waived its right to challenge amendment of these complaints believing that this would enable it and the SHC to file "single, consolidated motions to dismiss[.]" *Id.* at 2.

On Saturday, March 18, Mr. Kreindler informed me for the first time of the *Ashton* plaintiffs' intention to file a separate complaint that would be "different" from the Consolidated Amended Complaint. I immediately told Mr. Kreindler that it would be untimely and contrary to the agreement reached with the Plaintiffs' Executive Committees and approved by the Court. The new complaint was nonetheless filed on Monday, March 20, in a new docket, rather than in the MDL docket in which the *Ashton* plaintiffs have been litigating for more than a decade.

Saudi Arabia respectfully suggests that the status conference include a discussion of the new complaint, including any reasons that the allegations in the new complaint could not have been incorporated in the Consolidated Amended Complaint, and any reasons for the *Ashton* plaintiffs' decision not to serve their new allegations on the March 1 date agreed to by the parties and approved by the Court.

Respectfully submitted,


Michael V. Kellogg

The Kingdom of Saudi Arabia's request is GRANTED. The filing of a new complaint in Ashton v. Kingdom of Saudi Arabia, 17cv2003, shall be added to the agenda for the status conference on Thursday, March 23, 2017. It is further ORDERED that counsel for the Ashton plaintiffs attend the Court's March 23, 2017 status conference.

SO ORDERED.


SARAH NETBURN
United States Magistrate Judge

March 21, 2017
New York, New York